

Biodiesel and Renewable Diesel Fuels Credit

► Attach to your tax return.

OMB No. 1545-1924

2005

Attachment
Sequence No. **141**

Name(s) shown on return

Identifying number

Caution: You cannot claim any amounts on Form 8864 that you claimed (or will claim) on Schedule C (Form 720), Form 8849, or Form 4136.

Part I Current Year Credit

Claimant has a certificate from the producer or importer of biodiesel or renewable diesel reported on lines 1 through 6 below and, if applicable, claimant also has a statement from the reseller. Claimant has no reason to believe that the information in the certificate or statement is false. Claimant may need to attach a copy of the certificate and statement. See *Certification* on page 2.

| Type of Fuel | (a) Number of Gallons Sold or Used | (b) Rate | (c) Column (a) x Column (b) |
|--|--|-------------|--------------------------------|
| 1 Biodiesel (other than agri-biodiesel) | 1 | \$.50 | |
| 2 Agri-biodiesel | 2 | \$1.00 | |
| 3 Renewable diesel sold or used after December 31, 2005 | 3 | \$1.00 | |
| 4 Biodiesel (other than agri-biodiesel) included in a biodiesel mixture | 4 | \$.50 | |
| 5 Agri-biodiesel included in a biodiesel mixture | 5 | \$1.00 | |
| 6 Renewable diesel included in a renewable diesel mixture sold or used after December 31, 2005 | 6 | \$1.00 | |
| 7 Qualified agri-biodiesel production (gallons sold) (cooperatives, see instructions for election) | 7 | \$.10 | |
| 8 Add lines 1 through 7. Include this amount in your income for 2005 (see instructions) | | 8 | |
| 9 Biodiesel and renewable diesel fuels credit(s) from a partnership, S corporation, estate, trust, or cooperative (see instructions) | | 9 | |
| 10 Current year credit. Add lines 8 and 9. (S corporations, partnerships, estates, and trusts, see instructions.) | | 10 | |

Part II Allowable Credit (See *Who must file Form 3800* to find out if you complete the lines below or file Form 3800.)

| | | | |
|--|-----|-----|----|
| 11 Regular tax before credits: | | | |
| • Individuals. Enter the amount from Form 1040, line 44 | | | |
| • Corporations. Enter the amount from Form 1120, Schedule J, line 3; Form 1120-A, Part I, line 1; or the applicable line of your return | | | 11 |
| • Estates and trusts. Enter the sum of the amounts from Form 1041, Schedule G, lines 1a and 1b, or the amount from the applicable line of your return | | | |
| 12 Alternative minimum tax: | | | |
| • Individuals. Enter the amount from Form 6251, line 35 | | | |
| • Corporations. Enter the amount from Form 4626, line 14 | | | 12 |
| • Estates and trusts. Enter the amount from Form 1041, Schedule I, line 56 | | | |
| 13 Add lines 11 and 12 | | | 13 |
| 14a Foreign tax credit | 14a | | |
| b Credits from Form 1040, lines 48 through 54 | 14b | | |
| c Possessions tax credit (Form 5735, line 17 or 27) | 14c | | |
| d Nonconventional source fuel credit (Form 8907, line 23) | 14d | | |
| e Other specified credits (see instructions) | 14e | | |
| f Add lines 14a through 14e | | 14f | |
| 15 Net income tax. Subtract line 14f from line 13. If zero, skip lines 16 through 19 and enter -0- on line 20 | | | 15 |
| 16 Net regular tax. Subtract line 14f from line 11. If zero or less, enter -0- | 16 | | |
| 17 Enter 25% (.25) of the excess, if any, of line 16 over \$25,000 (see instructions) | 17 | | |
| 18 Tentative minimum tax (see instructions) | 18 | | |
| 19 Enter the greater of line 17 or line 18 | | 19 | |
| 20 Subtract line 19 from line 15. If zero or less, enter -0- | | 20 | |
| 21 Credit allowed for the current year. Enter the smaller of line 10 or line 20 here and on Form 1040, line 55; Form 1120, Schedule J, line 6d; Form 1120-A, Part I, line 2; Form 1041, Schedule G, line 2c; or the applicable line of your return. If line 20 is smaller than line 10, see instructions | | | 21 |

General Instructions

Section references are to the Internal Revenue Code.

What's New

The IRS issued Notice 2005-62 to clarify the biodiesel certificate rules and require copies of certificates to be attached to Form 8864 in certain situations. The Energy Tax Incentives Act of 2005 amended section 40A to add credits for renewable diesel fuel sold or used after December 31, 2005. The Act also added a small agri-biodiesel producer credit for tax years ending after August 8, 2005.

Purpose of Form

Use Form 8864 to figure your biodiesel and renewable diesel fuels credit. Claim the credit for the tax year in which the sale or use occurs. This credit consists of the:

- Biodiesel credit,
- Renewable diesel credit,
- Biodiesel mixture credit,
- Renewable diesel mixture credit, and
- Small agri-biodiesel producer credit.

Small agri-biodiesel producer credit allowed prior to your 2005 tax year. This credit is allowed for gallons sold in tax years ending after August 8, 2005. If you have a credit that occurs in your tax year beginning in 2004 and ending after August 8, 2005, include this credit on line 5 of the 2004 Form 8864. Enter "SABPC" and the amount of the credit on the dotted line to the left of the entry space for line 5. Attach a statement showing the information requested on line 7 of this form and file it with your original or amended tax return.

Definitions and Special Rules

Certification

To claim a credit on lines 1, 2, 4, or 5, for biodiesel sold or used through August 29, 2005, you must obtain and keep as part of your records a certificate from the producer or importer of the biodiesel. For biodiesel sold or used after August 29, 2005, you generally must attach the revised Certificate for Biodiesel and, if applicable, Statement of Biodiesel Reseller, to Form 8864. To claim a credit on lines 3 or 6, you generally must attach a certificate from the producer identifying the product as renewable diesel and, if applicable, a statement from the reseller. However, if the certificate or statement was attached to a previously filed claim, attach a separate sheet with the following information.

- Certificate identification number.
- Total gallons of agri-biodiesel, biodiesel other than agri-biodiesel, or renewable diesel on the certificate.
- Total gallons claimed on Schedule 3 (Form 8849).
- Total gallons claimed on Schedule C (Form 720).
- Total gallons claimed on Form 4136.

See Notice 2005-62 on page 443 of Internal Revenue Bulletin 2005-35 or Publication 510, Excise Taxes for 2006, for model certificates and statements.

Biodiesel

Biodiesel means the monoalkyl esters of long chain fatty acids derived from plant or animal matter which meet the registration requirements for fuels and fuel additives established by the Environmental Protection Agency (EPA) under section 211 of the Clean Air Act, and the requirements of the American Society of Testing and Materials (ASTM) D6751.

Biodiesel includes both agri-biodiesel and biodiesel other than agri-biodiesel.

Agri-Biodiesel

Agri-biodiesel means biodiesel derived solely from virgin oils, including esters derived from virgin vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, and mustard seeds, and from animal fats.

Renewable Diesel

Renewable diesel means diesel fuel derived from biomass (defined below) using a thermal depolymerization process which meets the registration requirements for fuels and fuel additives established by the EPA under section 211 of the Clean Air Act, and the requirements of the ASTM D975 or D396.

Biomass. Biomass means any organic material other than oil and natural gas (or any product thereof) and coal (including lignite) or any product thereof.

Biodiesel and Renewable Diesel Credits

The biodiesel or renewable diesel must not be a mixture. The credits are for biodiesel or renewable diesel which during the tax year you:

- Used as a fuel in a trade or business, or
- Sold at retail to another person and put in the fuel tank of that person's vehicle.

However, no credit is allowed for fuel used in a trade or business that was purchased in a retail sale described above.

Caution: You may be liable for a 24.4 cents per gallon excise tax on biodiesel or renewable diesel you used or sold for use in your trade or business in a diesel-powered highway vehicle or diesel-powered train. Report the tax liability on Form 720 on the line for IRS No. 60(b) for the quarter in which the biodiesel or renewable diesel was sold or used.

Biodiesel and Renewable Diesel Mixture Credits

The biodiesel or renewable diesel must be used to make a qualified mixture. A qualified mixture combines biodiesel or renewable diesel with diesel fuel (defined below), determined without regard to any use of kerosene. The producer of the mixture either:

- Used it as fuel, or
- Sold it as fuel to another person.

The credit is available only to the producer who blends the mixture. The producer must use or sell the mixture in a trade or business and the credit is available only for the year the mixture is sold or used. The credit is not allowed for casual off-farm production of a qualified mixture.

Caution: You may be liable for a 24.4 cents per gallon excise tax on biodiesel or renewable diesel used to produce a mixture outside the bulk transfer terminal system if the mixture is diesel fuel. Report the tax liability on Form 720 on the line for IRS No. 60(c) for the quarter in which the mixture was sold or used.

Diesel fuel.

Diesel fuel means:

- Any liquid that, without further processing or blending, is suitable for use as a fuel in a diesel-powered highway vehicle or diesel-powered train,

- Transmix, and
- Diesel fuel blendstocks (when identified by the IRS).

A liquid is suitable for this use if the liquid has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle or diesel-powered train. A liquid may possess this practical and commercial fitness even though the specified use is not the liquid's predominant use. However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the propulsion engine of a diesel-powered highway vehicle or diesel-powered train. Diesel fuel does not include gasoline, kerosene, excluded liquid, No. 5 and No. 6 fuel oils covered by ASTM specification D396, or F-76 (Fuel Naval Distillate) covered by military specification MIL-F-16884.

An excluded liquid is any liquid that (a) contains less than 4% normal paraffins, or (b) has a (i) distillation range of 125° F or less, (ii) sulfur content of 10 parts per million or less, and (iii) minimum color of +27 Saybolt. For example, biodiesel is always an excluded liquid because it does not contain paraffins. But a biodiesel mixture may not be an excluded liquid.

Transmix means a by-product of refined products created by the mixing of different specification products during pipeline transportation.

Qualified Agri-Biodiesel Production

Qualified agri-biodiesel production means up to 15 million gallons of agri-biodiesel which is produced by an eligible small agri-biodiesel producer (defined below), and which during the tax year:

- Is sold by such producer to another person:
 - For use by such person in the production of a qualified biodiesel mixture in such other person's trade or business (other than casual off-farm production),
 - For use by such person as a fuel in a trade or business, or
 - Who sells such agri-biodiesel at retail to another person and places such agri-biodiesel in the fuel tank of such other person, or
- Is used or sold by such producer for any purpose described in (1).

Eligible small agri-biodiesel producer. An eligible small agri-biodiesel producer is a person who, at all times during the tax year, has a productive capacity for agri-biodiesel not in excess of 60 million gallons.

Aggregation rule. All members of the same controlled group of corporations (see section 267(f)) and all persons under common control (see section 52(b) but treat an interest of more than 50% as a controlling interest) are treated as 1 person for purposes of the 15 and 60 million gallon limits.

Partnership, S corporation, and other pass-through entities. The 15 and 60 million gallon limits discussed above are applied at both the entity level and at the partner or similar level.

Registration

All producers and importers of biodiesel or renewable diesel must be registered with the IRS. All persons producing blended taxable fuel must be registered. See Form 637, Application for Registration (For Certain Excise Tax Activities).

Coordination With Excise Tax Credit

Only one credit may be taken with respect to any amount of biodiesel or renewable diesel. If any amount is claimed (or will be claimed) with respect to any amount of biodiesel or renewable diesel on Form 720, Quarterly Federal Excise Tax Return, Form 8849, Claim for Refund of Excise Taxes, or Form 4136, Credit for Federal Tax Paid on Fuels, then a claim cannot be made on Form 8864 for that amount of biodiesel or renewable diesel.

Recapture of Credit

You must pay tax on each gallon of biodiesel or renewable diesel on which a credit was claimed at the rate used to figure the credit if you later:

- Use it (including a mixture) other than as a fuel,
- Buy it at retail and use it to create a mixture,
- Separate it from a mixture, or
- Use agri-biodiesel on which the small agri-biodiesel producer credit was claimed for a use not described under *Qualified Agri-Biodiesel Production* above.

Report the tax on Form 720, Quarterly Federal Excise Tax Return.

Additional Information

See Pub. 510, Excise Taxes for 2006.

Specific Instructions

Part I. Current Year Credit

Use lines 1 through 8 to figure any biodiesel and renewable diesel fuels credit from your own trade or business.

Skip lines 1 through 8 if you are claiming only a credit that was allocated to you from a pass-through entity (that is, an S corporation, partnership, estate, trust, or cooperative).

Line 7

A cooperative described in section 1381(a) can elect to allocate any part of the small agri-biodiesel producer credit among the patrons of the cooperative. The credit is allocated among the patrons eligible to share in patronage dividends on the basis of the quantity or value of business done with or for such patrons for the tax year.

To make an election, attach a statement to your timely filed return (including extensions) indicating the amounts you would report on line 7 of Form 8864 without an election and the amounts you are electing to allocate to patrons. Enter on line 7 any amounts that will not be allocated.

If you timely file your return without making an election, you can still make the election by filing an amended return within 6 months of the due date of the return (excluding extensions). Enter "Filed pursuant to section 301.9100-2" on the amended return.

Once made, the election cannot be revoked.

Line 8

Include this amount in income, under "other income" on the applicable line of your income tax return, even if you cannot use all of the credit because of the tax liability limit. However, if you are subject to alternative minimum tax (AMT), this amount is not income in computing AMT and must be subtracted when figuring your alternative minimum taxable income. Do this by including this amount on line 26 of Form 6251, line 23 of Schedule I, Form 1041, or line 20 of Form 4626.

Line 9

Enter the amount of credit that was allocated to you as a shareholder, partner, beneficiary, or patron.

If you are allocated a small agri-biodiesel producer credit from a pass-through entity, the entity must tell you the number of gallons for which it claimed the credit and its productive capacity for agri-biodiesel. You, as a shareholder, partner, beneficiary, or patron, are subject to the 15 million gallon limitation for line 7 and the 60 million gallon productive capacity limitation for an eligible small agri-biodiesel producer.

Line 10

S corporations and partnerships. Allocate the line 10 credit among the shareholders or partners. Show the credit for each shareholder or partner on Schedule K-1. Electing large partnerships include this credit in "general credits."

Estates and trusts. Allocate the line 10 credit between the estate or trust and the beneficiaries in proportion to the income allocable to each. In the margin to the right of line 10, the estate or trust should enter its part of the total biodiesel and renewable fuels credit. Label it "1041 portion" and use this amount in Part II (or on Form 3800, if required) to figure the credit to claim on Form 1041. Also, enter and identify the total beneficiaries' share of the credit to the right of line 10 and attach a schedule showing how the total credit was divided.

Part II. Allowable Credit

The credit allowed for the current year may be limited based on your tax liability. Use Part II to figure the allowable credit unless you must file Form 3800, General Business Credit.

Who must file Form 3800. You must file Form 3800 if you have:

- A biodiesel and renewable diesel fuels credit from a passive activity,
- More than one credit included in the general business credit (other than a credit from Form 8844, Form 6478, or Section B of Form 8835), or
- A carryback or carryforward of any of those credits.

See the Instructions for Form 3800 for a list of credits included in the general business credit.

Line 14e

Include on line 14e any amounts claimed on:

- Form 8834, Qualified Electric Vehicle Credit, line 20,
- Form 8910, Alternative Motor Vehicle Credit, line 18, and
- Form 8911, Alternative Fuel Vehicle Refueling Property Credit, line 19.

Line 17

See section 38(c)(5) for special rules that apply to married couples filing separate returns, controlled corporate groups, regulated investment companies, real estate investment trusts, and estates and trusts.

Line 18

Although you may not owe AMT, you generally must still compute the tentative minimum tax (TMT) to figure your credit. For a small corporation exempt from the AMT under section 55(e), enter -0-. Otherwise, complete and attach the applicable AMT form or schedule. Enter on line 18 the TMT from the line shown below.

- Individuals: Form 6251, line 33.
- Corporations: Form 4626, line 12.
- Estates and trusts: Form 1041, Schedule I, line 54.

Line 21

If you cannot use all of the credit because of the tax liability limit (line 20 is smaller than line 10), carry the unused credit back 1 year and then forward up to 20 years. See the Instructions for Form 3800 for details.

Note. Any unused renewable diesel credit claimed on lines 3 or 6 cannot be carried back to a tax year ending before 2006. Any unused small agri-biodiesel producer credit claimed on line 7 cannot be carried back to a tax year ending before August 9, 2005.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for individual taxpayers filing this form is approved under OMB control number 1545-0074 and is included in the estimates shown in the instructions for their individual income tax return. The estimated burden for all other taxpayers who file this form is shown below.

Recordkeeping 8 hrs., 36 min.

Learning about the law or the form 57 min.

Preparing and sending the form to the IRS 2 hrs., 20 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.

